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Study on the impact of the mining boom on indigenous communities in Australia

Note by the Secretariat

Pursuant to a decision of the Permanent Forum on Indigenous Issues at its eleventh session (see E/2012/43, para. 106), Megan Davis, a member of the Forum, undertook a study on the impact of the mining boom on indigenous communities in Australia, which is hereby submitted to the Forum at its twelfth session.

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Study on the impact of the mining boom on indigenous communities in Australia

I. Introduction

1. Like many States, Australia has over the years experienced a series of mining booms — distinguished by a significant increase in mining investment or mining output — and is currently experiencing a mineral and energy boom.[1] While it has not endured the failings associated with other countries caught up by the phenomenon known as the "paradox of plenty" or the "resource curse", where mineral-rich States suffer a decline in the rule of law and public institutions and regions experience extreme poverty, there exist some mining regions, where Aboriginal populations are significant majorities, for which the socioeconomic data show extreme poverty.[2]

2. In Australia, more than 20 per cent of the land mass is held by indigenous peoples in a variety of statutory land tenure systems.[3] It is therefore unsurprising that more than 60 per cent of mining projects in Australia are in close proximity to indigenous communities.[4] Most of these projects occur in the Pilbara region of Western Australia.[5] The current mining boom in Australia having significantly affected indigenous communities, the present study will provide an overview of the positive and negative aspects of the boom, drawing upon the extensive literature generated since the boom began. Some of the beneficial impacts include agreement-making with indigenous peoples, economic development and capacity-building, employment opportunities and improved infrastructure. The adverse effects have been felt in terms of reduced cultural and community well-being, environmental damage, damage to sacred sites and increased cost of living, including reduced access by indigenous peoples to affordable housing and health services.

3. It should be noted, however, that there is a lack of reliable demographic data on the impact of mining on indigenous communities and that tools to measure quality of life or well-being lack a cross-cultural fit or indigenous input, meaning that the data that are available are limited in providing an accurate picture of the impact of the mining boom.[6] The challenge of measuring indigenous well-being is

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[1] Ric Battellino, "Mining boom and the Australian economy", *Bulletin* (Reserve Bank of Australia, 2010).

[2] Marcia Langton and Odette Mazel, "The resource curse compared: Australian Aboriginal participation in the resource extraction industry and distribution of impacts", in *Community Futures, Legal Architecture: Foundations for Indigenous Peoples in the Global Mining Boom*, Marcia Langton and Judy Longbottom, eds. (Oxford, Routledge, 2012).

[3] Marcia Langton and Odette Mazel, "Poverty in the midst of plenty: Aboriginal people, the 'resource curse' and Australia's mining boom", *Journal of Energy and Natural Resources Law*, vol. 26, No. 1 (2008), pp. 31-65.

[4] Australia, Department of Industry, Tourism and Resources, *Working with Indigenous Communities: Leading Practice Sustainable Development Program for the Mining Industry* (2007), p. 3.

[5] John Taylor and Benedict Scambary, "Indigenous people and the Pilbara mining boom: a baseline for regional participation", Research Monograph, No. 25 (Canberra, Centre for Aboriginal Economic Policy Research, Australian National University, 2005).

[6] Jon Altman and David Martin, eds., "Power, culture, economy: indigenous Australians and mining", Research Monograph, No. 30 (Canberra, Centre for Aboriginal Economic Policy Research, Australian National University, 2009).

one that has previously been raised by the Permanent Forum on Indigenous Issues (see E/C.19/2006/CRP.3).

4. The present study will begin by considering the relevant articles of the United Nations Declaration on the Rights of Indigenous Peoples before surveying the positive and negative impacts of the boom in terms of agreement-making, employment and the social fabric, including factors such as housing, health and well-being.

II. Relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples

5. The United Nations Declaration on the Rights of Indigenous Peoples contains a number of relevant provisions. Article 3 outlines the right to be involved in the decision-making process and measures that affect personal rights to development. Article 8 enshrines the right to equal protection under the law and seeks to eliminate and prevent discrimination. Article 10 enshrines rights against removal from land. Article 25 stresses the importance of cultural and spiritual values that exist in the relationship with land, while article 26 pertains to the right to own and have access to land on the basis of traditional ownership. Article 28 outlines the right to compensation. Article 29 enshrines the right to use, manage and conserve resources and land, while article 32 sets out the right to have input into decisions where States retain ownership of minerals or subsurface resources. Article 33 pertains to the right to develop and determine identity and membership.

III. Impacts of the mining boom

A. Agreement-making

6. Much of the mining activity in Australia occurs on indigenous lands. It therefore follows that the benefits of the mining boom are available to those indigenous communities who live in, or whose territories are in close proximity to, mining areas. Agreement-making between mining companies and indigenous communities is a feature of the current boom. Indeed, this boom can be characterized as featuring emerging best practice in relation to agreement-making, whereby mining companies are taking a more long-term approach that involves consideration of the well-being and socioeconomic disadvantage of indigenous peoples. This means that agreements cover not only distribution of revenue but also poverty, education, training, health and culture.

7. Generally, the mining industry has been required by law to engage with indigenous peoples and enter into agreements with indigenous communities by virtue of existing legal frameworks such as the Native Title Act 1993 and the Aboriginal Land Rights (Northern Territory) Act 1976. It is important to note that agreement-making activity and the proceeds of any agreement made will not necessarily involve or reach indigenous communities simply because they live near a mine. Rather, property rights holders such as native title holders will be primarily

involved. Indeed, it is accepted that few communities in Australia will benefit from mining revenues.[7]

8. The assumption underlying discussion of the mining boom is that indigenous communities have the capacity to win significant revenues from mining on their traditional lands. In the Northern Territory and in the Cape York, Pilbara and Kimberley regions, this assumption increasingly holds true. As demonstrated by recent research into financial and other provisions of agreements between indigenous groups and mining companies, however, many indigenous groups and their communities in Australia still have little capacity to insist on substantial payments. For those groups, the issue of whether mineral revenues represent a curse or an opportunity is, as yet, purely hypothetical.

9. Evidence shows that the quality of mining agreements and their benefits are difficult to ascertain because of the confidentiality of such agreements: it may be the case that the mere act of concluding agreements has not necessarily assured meaningful or equitable outcomes for a significant proportion of indigenous communities.[2] In addition, the effectiveness of an agreement may depend on the administering indigenous organization and its skills and resources. Accordingly, while the right to negotiate under the Native Title Act does provide opportunities for indigenous communities, low levels of employment, educational attainment and work readiness in remote areas limit the capacity of the mining boom to transform communities.[2] In addition, it is contended that state governments in Australia, e.g. that of Western Australia, have exacerbated these obstacles for indigenous communities through inequitable taxation arrangements and by failing to redistribute the wealth generated in those regions.[2]

10. In any event, it has been rights holders and, in particular, native title holders who have led the way in increased activity in agreement-making between mining industries and native title holders. The formal recognition of indigenous rights has encouraged the minerals industry to take a new approach, acknowledging the detrimental impacts of mining on Aboriginal communities and their entitlement to benefits as a result.[2] One important benefit of this is that the proliferation of agreement-making has resulted in the development by indigenous communities of expertise, skills and experience in negotiating agreements.

11. Four main ways in which mining revenues are distributed to indigenous communities have been identified: individual payments to individuals (in cash or in kind); provision of services; investment in indigenous businesses; and investment in long-term capital funds.[7] Indeed, trusts have been a significant development of the boom for a number of reasons, including their ability to improve governance and financial management. Nevertheless, there is concern about the limitations of trusts regarding royalties manifest in the tax implications for indigenous organizations. In addition, some of those communities benefiting from agreements and revenues have expressed concern that the benefits are tied to trusts for future use. Another issue raised in relation to the boom is rent seeking, or behaviour that prioritizes competition for access to existing resources, while ignoring or downplaying opportunities to generate new/additional resources.[7] There is concern that beneficiaries may give

[7] Ciaran O'Faircheallaigh, "Curse or opportunity? Mineral revenues, rent seeking and development in Aboriginal Australia", in *Community Futures, Legal Architecture*, Langton and Longbottom, eds.

preference to individual payments over an approach sustainable beyond the boom such as royalties for community benefit.

12. Those challenges aside, one of the most exciting developments of the current boom is the partnership approach between mining companies and indigenous communities that involves the investment by the former in community development and infrastructure. The underlying motivation is to ensure that communities reap sustainable benefits from the boom, achieved through a partnership approach that emphasizes indigenous self-determination. Indeed, in many indigenous communities in mining regions, mining companies are providing the infrastructure and services that the state governments, and the federal Government, are failing to deliver.

13. An example of a partnership agreement is that signed by Rio Tinto, which will direct a 0.5 per cent share of revenue in the Pilbara region to indigenous communities, estimated to represent billions of dollars over 40 years.[8] Similarly, the Argyle Diamond Mine Indigenous Land Use Agreement is regarded as a good practice model for partnerships between mining companies and indigenous peoples. Its structure includes two trust accounts. A total of 80 per cent of the royalties are paid into a charitable trust for law and culture, education and training and community development partnerships, which cannot be accessed until the closure of the mine in 2018. The remaining 20 per cent is paid into a discretionary trust, to be distributed between seven indigenous traditional owner groups to build capacity in health, education and business development. The agreement is considered to encourage individual enterprise and economic engagement rather than the common practice of accumulating and distributing payments.[9] In addition, employment of indigenous peoples has almost reached the 25 per cent target set in 2005, the lack of work readiness and training notwithstanding.[9]

B. Employment

14. Employment opportunities flowing from the mining boom have benefited those communities whose land is both in proximity to and affected by mining activity. Emerging from the boom is a body of good practice in relation to the recruitment, employment and retention of indigenous peoples by mining companies.[10] There are many programmes and partnerships aimed at employment of indigenous peoples, including those administered by Rio Tinto, the Australian Employment Covenant, partnerships between the federal and state governments and the Queensland Resources Council (in which BHP Billiton, Xstrata and MMG Century are participants) and indigenous programmes such as the North West Queensland Indigenous Resources Industry Initiative and the Bowen Basin Indigenous Participation Partnership.

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[8] Karen McNab and Magaly Garcia-Vasquez, "Autonomous and remote operation technologies in Australian mining", Cluster Research Report, No. 2.5 (Brisbane, Centre for Social Responsibility in Mining, Sustainable Minerals Institute, 2011). Available from www.csrm.uq.edu.au/Portals/0/docs/Autonomous-and-Remote-Operation.pdf.

[9] Kim Doohan, Marcia Langton and Odette Mazel, "From paternalism to partnership: the Good Neighbour Agreement and the Argyle Diamond Mine Indigenous Land Use Agreement in Western Australia", in *Community Futures, Legal Architecture*, Langton and Longbottom, eds.

[10] Tony Tiplady and Mary Anne Barclay, "Indigenous employment in the Australian minerals industry" (2007). Available from www.csrm.uq.edu.au/docs/CSRM%20Report_FINAL%20TO%20 PRINT_singles.pdf.

15. In addition to employment within communities in close proximity to mining concessions, regional and urban-based indigenous peoples have also become fly-in/fly-out employees of mines. It has been observed, however, that mining employment is often located away from indigenous communities and that individuals are reluctant to engage in purposeful migration to pursue work.[11]

16. Indigenous organizations and mining companies have identified that employment in the mining industry can be hampered by low education levels and skills, which limit the job readiness of local indigenous peoples.[2] Poor indigenous employment or labour force participation is less a measure of demand than it is a reflection of the fact that many indigenous peoples are poorly equipped to take advantage of skilled employment opportunities, even when they are available.[11] Even in relation to agreements that are regarded as good practice models in Australia, such as the Argyle Diamond Mine Indigenous Land Use Agreement, work readiness has been regarded as a challenge.[9] Nevertheless, Argyle Diamond Mine found that 91 per cent of trainees who participated in the indigenous programme and subsequently left were employed elsewhere.[12]

17. A less-discussed impact on indigenous employment is the reduction in long-term jobs as mining operations become largely autonomous and remotely controlled. One estimate was of a decrease of between 30 and 40 per cent in on-site employment in the future.[8] Given that 50 per cent of indigenous employees constitute semi-skilled positions, this large-scale automation will significantly affect indigenous employment.[8] Lastly, other factors that affect indigenous employment in mines include health and well-being, chronic illness, arrest and incarceration.[13]

C. Social impacts

18. The social impacts of the boom have been extensively documented in the Australian media and in the literature. Mining has a huge impact on the local social fabric[14] and indigenous communities in close proximity to mining operations can experience constant life insecurity.[2] Even in the Pilbara region, where indigenous peoples have been more engaged in the benefits of the current mining boom, the corporate resolve to employ indigenous workers according to the provisions of land use and other agreements has done little to improve socioeconomic conditions for Aboriginal people there.[2]

19. This insecurity or impact on the social fabric occurs for various reasons, including non-indigenous migration into indigenous communities and the existence of transient workers with no meaningful commitment to place;[14] better roads, meaning increased traffic and increased tourism; and community conflict stemming

[11] John Taylor, "Measuring indigenous outcomes from mining agreements in Australia", in *Community Futures, Legal Architecture*, Langton and Longbottom, eds., p. 60.

[12] See the survey of Aboriginal former employees and trainees of Argyle Diamond Mine carried out by the Centre for Social Responsibility in Mining in 2007, available from www.csrm.uq.edu.au/docs/Argyle%20former%20employees%20final%20report.pdf.

[13] John Taylor, "Data mining: indigenous peoples, applied demography and the resource extraction industry", in "Power, culture, economy", Altman and Martin, eds., p. 69.

[14] Kerry Carrington, Russell Hogg and Alison McIntosh, "The resource boom's underbelly: criminological impacts of mining development", *Australian & New Zealand Journal of Criminology*, vol. 34, No. 3 (2011), pp. 335 and 340.

from perceived and real opportunities for income, jobs and education. In particular, the mining boom has shed light on the lack of government investment in services, facilities and infrastructure in mining regions and the declining economic status of Aboriginal people.[2]

20. For example, the mining boom has led to housing shortages and increased rent, placing added stress on already difficult and strained housing stock for indigenous peoples. In addition, the fly-in/fly-out practice has rendered social housing less accessible. In the Pilbara region, for example, the state government sold off state housing to a private construction company for the purpose of creating fly-in/fly-out camps. Such steps can lead to increased homelessness for indigenous peoples. In addition, the strain of housing and homelessness leads to family disruption and breakdown and other abuses, including violence and alcohol.

21. While it has been noted that mining companies have contributed to infrastructure and service delivery in indigenous communities, including by providing resources for health services, many health concerns have arisen in relation to the boom. As highlighted in one report, the life expectancy for indigenous men in the Pilbara region is between 52 and 55 years and for indigenous women is between 60 and 63 years, which raises questions about the physical limitations on full participation in the workforce. The report states that, "if we add to this the fact of relatively high Indigenous morbidity rates commencing in young adulthood and rising throughout the prime working ages, then a pattern emerges of severe physical constraints on the ability of many in the community to engage in meaningful and sustained economic activity".[5] The current indigenous health crisis in Australia therefore already poses an obstacle to full participation in the labour market, as does the vastly underresourced health infrastructure that some mining companies have targeted in their agreements with indigenous communities.

22. In addition, medical issues such as whooping cough or gastroenteritis have been known to spread more easily in fly-in/fly-out camps. The impact of any medical crisis upon such camps means that local health services are stretched even further. There are also concerns about substance abuse, including high levels of alcohol consumption and drug-taking, as mining employees inundate towns. The corollary of such inflows is the antisocial and violent behaviour that occurs with, in particular, high consumption of alcohol. The high cost of living frequently found in mining regions entails high food prices, which will affect the nutrition of indigenous families and the selection of fresh fruit and vegetables. Lastly, an issue raised by many indigenous peoples is the impact of the mining boom on their culture, with elders noting the diminution of leadership. Mining employment can affect the maintenance of cultural knowledge.

IV. Conclusions

23. The present study has provided a brief overview of the impact of the current Australian mining boom on indigenous peoples and their communities. The impact is both negative and positive. Mining activity occurs mostly on indigenous lands and the literature reveals that the redistribution of the wealth from the mining boom to indigenous communities is inequitable.[2] Moreover, how indigenous peoples prepare for the future is important, given that they need the benefits of the mining boom — employment, training, education, business investment and community development

— to be sustainable far into the future, lest they find themselves in a precarious position when mine closures, or any slowdown in the boom, affect income streams. It has been argued that support from native title corporations, regional service providers and community councils needs to play a critical role in overcoming the inequitable distribution of benefits and the consequences of the mining boom and that indigenous administrative governance and leadership need to provide capacity-building and leadership programmes to build capability.[3]